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EVIDENCE—COMPETENCY—WIFE'S TESTIFYING AGAINST HUSBAND—MOCK MARRIAGE.—The defendant procured a person without authority to solemnize a mock marriage between himself and the prosecuting witness. Such solemnizing is by statute a crime, and he was prosecuted as an accessory. The statute provides that a marriage under such circumstances is valid. On the trial it was objected that the wife was not competent to testify against her husband. *Held*, that the circumstances formed an exception, and that the wife was a competent witness. *Barclay* v. *Commonwealth* (1903), —Ky. —, 76 S. W. Rep. 4.

Sec. 2102, Ky. St. 1899 provides:—"No marriage solemnized before any person professing to have authority therefor shall be invalid for the want of such authority, if it is consummated with the belief of the parties, or either of them that he had authority, and that they have been legally married." The Kentucky code provides that neither husband nor wife may testify against the other, (Civ. Code 1895 s. 606) and this provision is declaratory of the common law. The decision is based on the exception to the rule of the common law as expressed in 1 GREENLEAF ON EVIDENCE, s. 343. It may well be doubted whether this is an offense which brings the case within the exception, as there was no violence, no crime against the wife, and no forcible abduction. The undoubted weight of authority is that this exception relates only to crimes committed by one upon the person of the other by violence. *Rex* v. *Sergeant*, 8 Bing. 352, 21 Eng. C L. 764; *Reeve* v. *Wood*, 10 Cox C. C. 58; *Stein* v. *Bowman*, 13 Peters 209,222; *People* v. *Carpenter*, 9 Barb. 580; *People* v. *Briggs*, 60 How. Pr. 17; *State* v. *Armstrong*, 4 Minn. 335; *Bassett* v. *United States*, 137 U. S. 496; *People* v. *Quanstrom*, 93 Mich. 254, 53 N. W. 165, 17 L. R. A. 723. See also note 2, s, 343, 1 Greenleaf, 29 Am. & Eng. Encyc. of L. p. 638 and cases cited below. If there was any violence or crime against the witness it was before the marriage, and of such she was not competent to testify after lawful marriage. See *Miller* v. *State*, *People* v. *Curiale*, *State* v. *Frey*, *People* v. *Schoonmaker*, *and State* v. *Evans*, cited below. It makes no difference when the relation begins (Greenleaf ss, 334, 336), and it would seem that it should be immaterial whether the relation begins by the ordinary ceremony or by operation of the statute. In either case the wife is incompetent because the relation lawfully exists. From a practical point of view the decision may have much to commend it, but technically and logically the reasoning is not in accord with the decided cases; however, there seem to be no cases directly in point. After deciding that the case falls within the exception the judge says: "If the rule were otherwise it would be within the power of the defendant, by consummating the marriage, and thus adding another wrong to the crime he had already committed, to protect himself from punishment." This reasoning, though it may appear at first blush to be correct, is unsound; for it is well settled that a defendant may thus protect himself by marrying a witness, both when the crime is against the wife before marriage, and when it is against a third party. *Moore* v. *State* (1903) — Tex. Cr. R. —, 75 S. W. 497; *Miller* v. *State*, 37 Tex. Cr. R. 575, 40 S. W. 313; *Barnett* v. *State* (1903) — Ga. —, 43 S. E. 720; *People* v. *Curiale*, 137 Cal. 534, 70 Pac. 468, 59 L. R. A. 588; *State v.* Frey, 76 Minn. 526, 79 N. W. 518, 77 Am. St. Rep. 660; *People* v. *Schoonmaker*, 117 Mich. 190, 75 N. W. 439, 72 Am. St. Rep. 560; *State* v. *Evans*, 138 Mo. 116, 39 S. W. 462, 60 Am. St. Rep. 549.

INSOLVENCY — PARTNERSHIP—SECURED CREDITORS — MORTGAGE ON EXEMPT PROPERTY—MORTGAGE ON PROPERTY OF INDIVIDUAL PARTNER.—A partnership was adjudged insolvent. The three members composing the

firm were at the same time adjudged insolvent, but no individual creditors appeared. By Cal. St. 1895, p. 146 § 48, when a creditor has a mortgage on real property of the debtor, he shall be admitted as a creditor in insolvency proceedings of the debtor's estate only for the balance of the debt after deducting the value of the mortgaged property. The Anglo-California Bank, a firm creditor, held a mortgage on the homestead of one of the individual partners as partial security for the debt. On appeal by the Bank from a decree directing the bank to deduct from its proven debt the value of the homestead. *Held*, that appellant should have been permitted to prove its entire claim. *In re Levin Bros. Estate* (1903), — Cal. —, 73 Pac. Rep, 159,

That a creditor in insolvency proceedings may prove his whole claim if the security which he holds is given by a third person is a recognized principle. *In re Dunkerson*, 4 Biss. (U. S.) 253. The same is likewise true if the claim is against a partnership and his security is upon the separate estate of one of the individual partners. *In re Holbrook*, 2 Lowell (U. S.) 259. Is an exception to this rule created by the fact that there are no individual creditors? The court in this case hold that such a condition makes no difference and that the bank, the creditor, may still prove its entire claim. The authority cited is *In re Thomas*, 8 Biss. (U. S.) 139. Furthermore, the court hold that the bank may prove its entire claim because the mortgage in question is upon exempt property. Their reasoning to sustain this conclusion is that, as exempt property does not pass to the assignee any way, a mortgage upon it is in the precise position of a mortgage on the property of a third person. The total amount of assets to be distributed among the general creditors is not diminished by a retention of such security nor would the fund be added to by its surrender. This holding creates a precedent well supported by reason.

INSURANCE—BENEFIT SOCIETIES—CHANGE OF BENEFICIARIES—PAYMENT OF PREMIUMS.—One Spengler took out a one thousand dollar certificate of insurance in a mutual benefit society. He made his wife beneficiary. He paid the premiums for a time, and then gave the certificate to his wife, saying that he made her a present of the "paper," that he had no money to keep it up, and that she could pay it if she chose. She took the certificate and paid the subsequent premiums. The society's rules allowed a member to change a beneficiary by surrendering up the old certificate, or making affidavit that it was lost or beyond his control, and then taking out a new one in favor of the new beneficiary. Spengler made such affidavit, took out a new certificate, and named a new beneficiary without the consent of his wife. She now files a bill in equity to set aside the new certificate. *Held*, That complainant had acquired no vested rights, and the bill could not be sustained. Neither could premiums paid by the complainant be recovered. *Spengler* v. *Spengler* (1903), — N. J. — 55 Atl. Rep. 285.

John J. Murphy took out a two thousand dollar certificate of insurance in the same society, Catholic Benevolent Legion. He made his wife original beneficiary. Becoming unable to pay the premiums, he told his wife if she would continue the payments she should have the benefit of the certificate. This she did, and she supported him, though he was able to support himself, but for his habit of drinking. Afterward, under a by-law of the society for change of beneficiaries, he attempted, while at the house of his sister, and under her influence, to change the beneficiary. The new certificate was to give one half to his wife and the other to his sister. He died, and the widow claimed the whole amount. The society paid one half the money into court, and brought this bill of interpleader against the widow and sister. *Held*, That the widow was entitled to the whole amount. That while there was